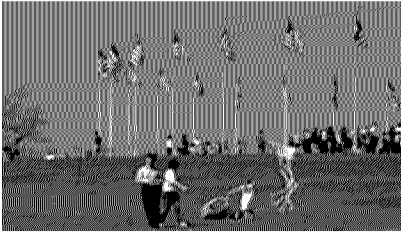


From: Mary Grady/DC/USEPA/US
Sent: 5/30/2012 10:11:13 AM

To: John Hannon/DC/USEPA/US@EPA; Mike Thrift/DC/USEPA/US@EPA; Jan Tierney/DC/USEPA/US@EPA; Winifred Okoye/DC/USEPA/US@EPA; Apple Chapman/DC/USEPA/US@EPA; Michael Horowitz/DC/USEPA/US@EPA; Lea Anderson/DC/USEPA/US@EPA; Patricia Embrey/DC/USEPA/US@EPA; Geoffrey Wilcox/DC/USEPA/US@EPA; Rick Vetter/RTP/USEPA/US@EPA; Steven Silverman/DC/USEPA/US@EPA; Padmini Singh/DC/USEPA/US@EPA; Kevin McLean/DC/USEPA/US@EPA; Jonathan Averbach/DC/USEPA/US@EPA; Wendy Blake/DC/USEPA/US@EPA; Cheryl Graham/DC/USEPA/US@EPA; Elliott Zenick/DC/USEPA/US@EPA; Brian Doster/DC/USEPA/US@EPA; Amy Branning/DC/USEPA/US@EPA; Roland Dubois/DC/USEPA/US@EPA; Howard Hoffman/DC/USEPA/US@EPA; Diane McConkey/DC/USEPA/US@EPA; David Orlin/DC/USEPA/US@EPA; Lynda Crum/R4/USEPA/US@EPA; Amber Aranda/DC/USEPA/US@EPA; Keith Matthews/DC/USEPA/US@EPA; Carol Holmes/DC/USEPA/US@EPA; Kendra Sagoff/DC/USEPA/US@EPA; Sheila Igoe/DC/USEPA/US@EPA; Sonja Rodman/DC/USEPA/US@EPA; Susan Stahle/DC/USEPA/US@EPA; Kristi Smith/DC/USEPA/US@EPA; Susmita Dubey/DC/USEPA/US@EPA; Peter Tsirigotis/RTP/USEPA/US@EPA; Paul Versace/DC/USEPA/US@EPA; Scott Jordan/DC/USEPA/US@EPA; David Dickinson/DC/USEPA/US@EPA; John Rowland/DC/USEPA/US@EPA; Gautam Srinivasan/DC/USEPA/US@EPA; Dave Salman/RTP/USEPA/US@EPA; Kristien Knapp/DC/USEPA/US@EPA; Quoc Nguyen/DC/USEPA/US@EPA; Anne-Marie Pastorkovich/DC/USEPA/US@EPA; Cynthia Giles-AA/DC/USEPA/US@EPA; Adam Kushner/DC/USEPA/US@EPA; Bruce Moore/RTP/USEPA/US@EPA; Matt Bogoshian/DC/USEPA/US@EPA; Mark Kataoka/DC/USEPA/US@EPA; OECA-OCE-AED; Sara Froikin/DC/USEPA/US@EPA; Tim Williamson/R1/USEPA/US@EPA; Allyn Stern/R10/USEPA/US@EPA; Becky Dolph/R7/USEPA/US@EPA; Bertram Frey/R5/USEPA/US@EPA; Carl Dierker/R1/USEPA/US@EPA; Cyndy Mackey/DC/USEPA/US@EPA; David Allnutt/R10/USEPA/US@EPA; Eric Schaaf/R2/USEPA/US@EPA; Lydia Isales/R3/USEPA/US@EPA; Marcia Mulkey/R3/USEPA/US@EPA; Meg Silver/R10/USEPA/US@EPA; Nancy Marvel/R9/USEPA/US@EPA; Peter Ornstein/R8/USEPA/US@EPA; Robert Kaplan/R5/USEPA/US@EPA; Robert Moyer/R9/USEPA/US@EPA; Robert Ward/R8/USEPA/US@EPA; Suzanne Murray/R6/USEPA/US@EPA; Ben Harrison/R6/USEPA/US@EPA; David Cozad/R7/USEPA/US@EPA; Steve Anderson/DC/USEPA/US@EPA; Melina Williams/DC/USEPA/US@EPA; Stephanie Hogan/DC/USEPA/US@EPA; Mike Walker/DC/USEPA/US@EPA; Robert Smolski/R3/USEPA/US@EPA; Steven Chester/DC/USEPA/US@EPA; Robert Klepp/DC/USEPA/US@EPA; Byron Bunker/AA/USEPA/US@EPA; Lauren Lovett/DC/USEPA/US@EPA; Megan Holloway/DC/USEPA/US@EPA; Mary Manners/AA/USEPA/US@EPA; Lawrence Starfield/DC/USEPA/US@EPA; Kaytrue Ting/DC/USEPA/US@EPA; Jeanette Morgan/R6/USEPA/US@EPA; Brent Williams/AA/USEPA/US@EPA; Suzanne Bessette/AA/USEPA/US@EPA

CC:

Subject: Air & Radiation Law News for May 30, 2012



AIR & RADIATION LAW NEWS
FOR MAY 30, 2012

BNA, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Air Pollution
[Sixth Circuit Says Citizen Suit Versus Ohio EPA Not Allowed Under Air Act](#)

CINCINNATI A citizen suit to compel the Ohio Environmental Protection Agency to enforce a Clean Air Act requirement to limit pollution from new and modified sources is without legal standing, a federal appeals court has ruled (Sierra...

Air Pollution
[Solicitor General Asks Supreme Court to Deny Plea to Review California Shipping Fuel Rule](#)

LOS ANGELES U.S. Solicitor General Donald B. Verrilli urged the Supreme Court to reject a shipping industry petition asking the court to weigh in on its lawsuit challenging California's low-sulfur fuel regulation for oceangoing...

Drilling
[Federal Appeals Court Rejects Challenges To Shell's Exploration Plans in Arctic Waters](#)

ANCHORAGE, Alaska A federal appeals court has dismissed challenges to the Obama administration's approval of Shell's plans to start drilling for oil this summer in Arctic waters off Alaska, rejecting arguments made by environmental...

Energy
[Boxer, Markey Say GAO Report Shows Nuclear Safety Guidelines Need Updating](#)

Most U.S. nuclear power plants are not using the most advanced risk assessment methodology available, which would better assess the plants' vulnerability to natural disasters such as earthquakes, floods, and hurricanes, according...

Energy
[DOE to Publish Rules for Residential Washers](#)

The Energy Department is scheduled May 30 to publish in the Federal Register direct final rules setting efficiency standards for clothes washers and dishwashers. The new standards will require residential dishwashers to use 15 percent less...

Energy
[EPA Rejects Industry Petition to Waive Cellulosic Biofuel Requirements for 2011](#)

The Environmental Protection Agency has rejected a petroleum industry petition to retroactively waive the cellulosic biofuel production requirements for 2011 under its renewable fuel standard....

Energy
[House Republicans Hold Fire on NRC Until Senate Can Confirm New Chairman](#)

House Republicans have decided to postpone their oversight hearing on the internal squabbles at the Nuclear Regulatory Commission and the future of nuclear power until after the Senate has confirmed Allison Macfarlane as the new chairman....

Energy
Republicans Threaten Interior With Subpoena
For Renewable Energy Project Information

Republican leaders from both chambers of Congress are threatening to subpoena the Interior Department, saying in a May 29 letter that the department has refused to provide information about Energy Department loan guarantee recipients who...

Federal Facilities
U.S. Asks High Court Not to Accept Rocky Flats Case

The Obama administration asked the Supreme Court May 25 not to intervene in a lawsuit over plutonium contamination in Rocky Flats, Colo. (Cook v. Rockwell International Corp., U.S., No. 10-1377, amicus brief filed 5/25/12). Solicitor General...



Inside EPA's **Environmental Policy Alert**, 5/30/12
<http://insideepa.com/Environmental-Policy-Alert/Environmental-Policy-Alert-05/30/2012/menu-id-132.html>

Industry Rejects EPA Fear Of 'Re-Grandfathering' Precedent In NSR Appeal

Power companies are rejecting EPA's claim to a federal appeals court that a lower court's ruling dismissing a new source review (NSR) enforcement action sets a major negative precedent allowing utilities to "re-grandfather," or perpetually avoid NSR pollution control permitting requirements, simply by changing the plants' ownership.

Appeals Court Rejects Activist Suit Seeking To Enforce Ohio Air Program

A federal appeals court has reversed and dismissed a lower court ruling that backed Sierra Club's suit seeking to compel Ohio into enforcing a Clean Air Act permitting program for new small sources of pollution, saying the air law's citizen suit provision does not extend to suits against states to administer federal regulations.

EPA Appears Hesitant On Industry Bid For 'Flexibility' In Shipping Air Rule

EPA officials appear hesitant to grant the cruise ship industry's request for a "flexible" implementation approach to its fuel sulfur rules for shipping that would allow some ships in remote areas to use fuel that leads to higher emissions, with one source saying the agency is "apoplectic" about the plan as it could increase overall air pollution.

Latest Blogs

EPA Revising Wood Stove Air Rule

EPA is detailing potential options for revising its decades-old new source performance standards (NSPS) emissions rules for wood-burning domestic stoves and boilers -- long sought . . .

Activists Criticize Louisiana Air Program

Environmentalists are stepping up their criticisms of Louisiana's delegated Clean Air Act Title V permit program, urging EPA headquarters to review and perhaps revoke the . . .



AIR POLLUTION: Utilities, demand-response companies spar over EPA rule on backup generators

Hannah Northey, E&E reporter

Published: Tuesday, May 29, 2012

Utilities and power marketers are warning U.S. EPA that easing air pollution rules for demand-response companies could encourage the use of dirty generators and distort power markets.

At issue is an EPA proposal that would more than quadruple the amount of time that demand-response companies can use backup diesel-fueled generators without tripping air pollution standards during times of peak power demands. The goal is to keep power flowing and prevent rolling blackouts.

The National Emissions Standards for Hazardous Air Pollutants (NESHAP) for reciprocating internal combustion engines would allow retail companies, manufacturers and other entities to use the generators for up to 100 hours a year -- as opposed to the current cap of 15 hours -- without curbing emissions.

The agency finalized a rule in March 2010 that allows grid operators to order schools, hospitals, companies and other entities to rely on generators to reduce stress on the grid and prevent rolling blackouts during emergencies.

But EPA eased the standard after running into stiff opposition from demand-response companies.

Boston-based demand-response company EnerNOC said that the 15-hour limit was arbitrary and that demand-response companies -- which bundle customers to pull back electricity demand on cue -- need to make generators available for more than 15 hours annually.

But the Electric Power Supply Association (EPSA) says demand-response companies are fighting to ease the standard to avoid installing emissions control technology on the generators, which use diesel and pollute. The companies would also be compensated for using the generators instead of conserving energy.

"The essential design and purpose of demand response is to encourage consumers to reduce their consumption of electricity in response to appropriate market signals, not to simply replace power from the grid with power from an on-site emergency diesel generator not subject to the same air emissions rules," John Shelk, EPSA's president and CEO, said in a statement.

David Brewster, EnerNOC's president, said EPSA and its members are mischaracterizing how often the generators are used because the electric sector benefits from high energy prices during times of tight supply.

The backup diesel generators are used only during emergencies to prevent rolling blackouts and only at the discretion of the grid operators, Brewster said. The machines are used as a "line of last defense," he added.

"The knee-jerk reaction is 'this is bad and this is diesel,' but the EPA, through a lot of education and attention they've given the matter, shows they recognize this is a valuable resource to prevent wide-scale blackouts," Brewster said. "EPSA would have you believe we're going to start running these generators willy-nilly in the markets, but the fact is these emergency backup diesel generators are only run at the discretion of the grid operators when the

grid is vulnerable."

EPA's new proposal also includes a provision aimed at addressing reliability concerns from EPA's new air standards for mercury and other air toxics. The proposal would allow emergency generators to operate without limits for up to 50 hours in "nonemergency" situations and high demand periods, or "peak shaving," through August 2017.

Capitol Hill backlash

The NESHAP rule has come under some scrutiny on Capitol Hill.

North Dakota Republican Rep. Rick Berg has said the rule is problematic in rural areas that rely heavily on stationary diesel and natural gas engines during peak shaving.

Berg introduced legislation in December that would exempt all existing engines from the new standards when being used for that purpose (*E&ENews PM*, Dec. 9, 2011).

In a statement to *Greenwire*, Berg applauded part of the new proposal but remained adamant that the standards are a step in the wrong direction.

"While the 50-hour threshold appears to be a step in the right direction, this is still over regulation by the Obama administration and the EPA," Berg said. "By simply kicking the can five years down the road, schools and small businesses are still not getting the long term certainty that they need. North Dakotans are still being forced to waste time fighting back the EPA's misguided policies instead of focusing on running their schools or businesses."

Reporter Jeremy P. Jacobs contributed.

AIR POLLUTION: Smog stifles sequoias in Calif. national parks

Published: Tuesday, May 29, 2012

Seedling giant sequoia redwoods are having trouble in Sequoia and Kings Canyon national parks, home to some of the largest and oldest organisms in the world. Smog from the nearby San Joaquin Valley is choking out the younger trees.

Stands of the park's Jeffrey and ponderosa pines are exhibiting yellowed needles, which happens when the trees take in ozone rather than carbon dioxide. The ozone blocks photosynthesis. Young redwoods have an especially difficult time.

"It's not a great story to tell, but it's an important story to tell because you can look at us as being the proverbial canary in a coal mine," said Annie Esperanza, a park scientist who has studied air quality there for 30 years. "If this is happening in a national park that isn't even close to an urban area, what do you think is happening in your backyard?"

The air pollution affects humans, as well. The smog in the area can be so bad that the parks' staff members put up signs when it isn't safe to hike. Also, the government's employment website cautions job applicants that the workplace is unhealthy.

San Joaquin Valley is home to a large agricultural industry as well as California's two busiest north-south trucking highways and several diesel freight-train corridors. When sunlight interacts with pollutants like nitrogen oxides and components in motor vehicle exhaust, solvents, pesticides, gasoline vapors and decaying dairy manure, it creates smog (Tracie Cone, *AP/San Francisco Chronicle*, May 29). -- **WW**

BIOFUELS: EPA rejects oil industry petition to waive 2011 cellulosic requirements

Amanda Peterka, E&E reporter

Published: Tuesday, May 29, 2012

U.S. EPA rejected Friday an oil industry petition for waiving 2011 cellulosic biofuel requirements, which refiners say forces them to pay for nonexistent biofuel.

The joint petition from the American Petroleum Institute, National Petrochemical & Refiners Association and Western States Petroleum Association asked EPA to retroactively abandon its 2011 requirement that the country produce 6.6 million gallons of cellulosic biofuel.

EPA sets the biofuel-volume requirement under the renewable fuel standard.

Producers have yet to commercialize cellulosic biofuel and effectively generated none last year. Refiners say they are being forced to pay for the gallons and renewable fuel credits that do not exist.

"EPA's mandate is out of touch with reality and forces refiners to pay a penalty for not using imaginary biofuels," said Bob Greco, API's director of downstream and industry operations. "EPA's unrealistic mandate is effectively an added tax on making gasoline."

Biofuel groups applauded EPA's decision. They had urged the agency to stand firm on its requirements, saying such action would provide the regulatory certainty needed to bring cellulosic biofuel to the commercial market.

The groups argued there were numerous ways for refiners to comply with the requirements, including purchasing waiver credits, purchasing renewable identification codes from the original renewable fuel standard set in 2005 or deferring their obligation for a year.

"Some oil refining industry lobbyists continue to try to throw regulatory obstacles in the way of the advanced biofuel industry," said Brent Erickson, executive vice president of the Biotechnology Industry Organization's industrial and environmental section. "We applaud the EPA for standing firm against these efforts."

In March, the American Petroleum Institute filed a separate challenge with the U.S. Court of Appeals for the District of Columbia Circuit opposing EPA's 2012 requirements. This year, the agency is mandating that the country produce 8.65 million gallons of cellulosic biofuel.

The nation's major ethanol trade groups are intervening in the case on behalf of EPA.

EPA has already drastically lowered the requirements compared to the levels Congress set out in the original 2007 law that created the current renewable fuel standard. The Energy Independence and Security Act set a goal of 250 million gallons last year and 500 million gallons this year.

The one bright spot in the advanced biofuels sector has been in biodiesel. EPA announced last week that the biodiesel industry produced 94.5 million gallons in April, bringing year-to-date production up to 331 million gallons.

ClimateWire -- Wed., May 30, 2012 -- [Read the full edition](#)

1. PUBLIC OPINION: Researchers see a silent majority supporting climate change action as a 'social issue'

America's "silent jury" on climate change is seen by some researchers as an important majority that could swing society into action to confront rising temperatures. They're the people whose emotions haven't yet colored their thinking about climate science and what should, or should not, be done to pinch off greenhouse gas emissions and begin adapting the nation to deal with the impacts of global warming.

2. TECHNOLOGY: Hundreds of materials might make carbon capture work -- study

What engineers call "parasitic load" is a major barrier for carbon capture. The peculiar term refers to the problem that most familiar carbon capture methods planned for coal-fired power plants use so much energy that commercial electricity generation becomes uneconomical. But a new study suggests a solution to this long-term problem for carbon capture, at least one that exists in the realm of theory.

TODAY'S STORIES

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 - 11. CARBON CAPTURE: U.S. and Canada expect to open commercial CCS plants before Europe**
 - 12. SPECIES: Some animals are not taking advantage of warmer real estate**
- E&ETV's OnPoint**
- 13. DEFENSE: Retired Lt. Gen. Sorenson discusses Pentagon's mandate on efficiency, renewables**

EnergyWire -- Wed., May 30, 2012 -- [Read the full edition](#)

1. ENFORCEMENT: EPA's Dimock results cloud Pa.'s pollution case

Dimock, Pa., has gone from being seen as the town destroyed by drilling to being known as the place where Cabot Oil and Gas Corp. got "crucified." After a high-profile round of testing by U.S. EPA, the drilling industry is touting the headlines that call Dimock's water "safe." Those headlines, though, ignore the reality that Cabot did pollute the water in Dimock, at least according to the Pennsylvania Department of Environmental Protection. Cabot says it didn't.

THIS MORNING'S STORIES

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- 7. WORKFORCE: Sagging natural gas production is dragging down industry growth in Canada**
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- 9. NATURAL GAS: N.Y. landowners in limbo as they duel for higher new lease rates**
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- 11. OFFSHORE DRILLING: Carbon dioxide injections considered to enhance oil recovery in marine fields**